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11 Attorneys for Plaintiff

12 FALCO ERMERT

13 **UNITED STATES DISTRICT COURT**

14 **EASTERN DISTRICT OF CALIFORNIA**

15 FALCO ERMERT,

16 Plaintiff,

17 v.

18 MODERNLY INC., JOSE ANTONIO
19 CHAVEZ, and MARGARITA ARAMBULA
20 CANO,

21 Defendants.

22 **Case No.:**

23 **COMPLAINT FOR COPYRIGHT
24 INFRINGEMENT (INJUNCTIVE RELIEF
25 DEMANDED)**

26 **Demand for Jury Trial**

27 Plaintiff FALCO ERMERT by and through his undersigned counsel, brings this Complaint
28 against Defendants MODERNLY INC., JOSE ANTONIO CHAVEZ, and MARGARITA
ARAMBULA CANO for damages and injunctive relief, and in support thereof states as follows:

29 **SUMMARY OF THE ACTION**

30 1. Plaintiff FALCO ERMERT (“Ermert”) brings this action for violations of exclusive
31 rights under the Copyright Act, 17 U.S.C. § 106, to copy and distribute Ermert’s original copyrighted
32 work of authorship.

33 2. Ermert is a German journalist and photographer. During his studies at the University
34 of Cologne, he worked as a photographer in the field of reporting and events. Ermert continues to

1 work for magazines, photographs personal projects, and conducts workshops. Ermert uses a
2 professional DJI drone and Nikon D5500 +DF for his editorial, travel, and commercial assignments
3 throughout Europe and beyond.

4 3. Defendant MODERNLY INC. (“Modernly”) is a real estate team consisting of
5 Margarita Arambula Cano aka Maggie Cano and Jose Anthony Chavez aka Tony Chavez, serving
6 the Central Valley of California. In addition to buying and selling homes, Modernly offers
7 professional photography, staging services, and the latest technology and marketing tools, including
8 the use of social media and the popular search engines, Zillow, Realtor, Trulia and the MLS. Upon
9 information and belief, at all times relevant herein, Modernly owned and operated the internet
10 website located at the URL www.maggiecanorealtor.com (the “Website”).

11 4. Defendant JOSE ANTONIO CHAVEZ aka Tony Chavez (“Chavez”) is co-owner and
12 the CEO of Modernly.

13 5. Defendant MARGARITA ARAMBULA CANO aka Maggie Cano (“Cano”) is co-
14 owner of Modernly.

15 6. Defendants Modernly, Chavez, and Cano are collectively referred to herein as
16 “Defendants.”

17 7. Ermert alleges that Defendants copied Ermert's copyrighted Work from the internet
18 in order to advertise, market and promote their business activities. Defendants committed the
19 violations alleged in connection with Defendants' business for purposes of advertising and
20 promoting sales to the public in the course and scope of the Defendants' business.

JURISDICTION AND VENUE

23 || 8. This is an action arising under the Copyright Act, 17 U.S.C. § 501.

24 9. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§
25 1331, 1338(a).

26 || 10. Defendants are subject to personal jurisdiction in California.

27 11. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and 1400(a)
28 because the events giving rise to the claims occurred in this district, Defendants engaged in

1 infringement in this district, Defendants reside in this district, and Defendants are subject to personal
2 jurisdiction in this district.

DEFENDANTS

12. Modernly Inc. is a California Corporation, with its principal place of business at 2512 West Locust Avenue, Fresno, CA 93711, and can be served by serving its Registered Agent, Mr. Jose Chavez, at the same address.

13. Jose Antonio Chavez is an individual residing in San Joaquin County, California and can be served at 190 South Veracruz Place, Tracy, California, 95391

14. Margarita Arambula Cano is an individual residing in San Juaquin County, California, and can be served at 190 South Veracruz Place, Tracy, California, 95391.

THE COPYRIGHTED WORK AT ISSUE

15. In 2017, Ermert created the photograph entitled “Jan-Thiel-Curacao,” which is shown below and referred to herein as the “Work”.



16. Ermert registered the Work with the Register of Copyrights on January 15, 2018 and was assigned the registration number VA 2-084-197. The Certificate of Registration is attached hereto as **Exhibit 1**.

17. At all relevant times Ermert was the owner of the copyrighted Work at issue in this case.

INFRINGEMENT BY DEFENDANTS

18. Defendants have never been licensed to use the Work at issue in this action for any purpose.

19. On a date after the Work at issue in this action was created, but prior to the filing of this action, Defendants copied the Work.

20. On or about August 1, 2020, Ermert discovered the unauthorized use of his Work on the Website.

21. Defendants copied Ermert's copyrighted Work without Ermert's permission.

22. After Defendants copied the Work, they made further copies and distributed the Work on the internet to promote the sale of goods and services as part of their real estate sales business.

23. Defendants copied and distributed Ermert's copyrighted Work in connection with Defendants' business for purposes of advertising and promoting Defendants' business, and in the course and scope of advertising and selling products and services.

24. Ermert's Work is protected by copyright but are not otherwise confidential, proprietary, or trade secrets.

25. Defendants committed copyright infringement of the Work as evidenced by the documents attached hereto as **Exhibit 2**.

26. Ermert never gave Defendants permission or authority to copy, distribute or display the Work at issue in this case.

27. Ermert notified Defendants of the allegations set forth herein on July 6, 2022. To date, the parties have failed to resolve this matter.

COUNT I
COPYRIGHT INFRINGEMENT

28. Ermert incorporates the allegations of paragraphs 1 through 27 of this Complaint as if fully set forth herein.

29. Ermert owns a valid copyright in the Work at issue in this case.

30. Ermert registered the Work at issue in this case with the Register of Copyrights pursuant to 17 U.S.C. § 411(a).

31. Defendants copied, displayed, and distributed the Work at issue in this case and made derivatives of the Work without Ermert's authorization in violation of 17 U.S.C. § 501.

32. Defendants performed the acts alleged in the course and scope of its business activities.

33. Defendants' acts were willful.

34. Ermert has been damaged.

35. The harm caused to Ermert has been irreparable.

WHEREFORE, the Plaintiff Falco Ermert prays for judgment against the Defendants Modernly Inc., Jose Antonio Chavez, and Margarita Arambula Cano that:

a. Defendants and their officers, agents, servants, employees, affiliated entities, and all of those in active concert with them, be preliminarily and permanently enjoined from committing the acts alleged herein in violation of 17 U.S.C. § 501;

b. Defendants be required to pay Plaintiff his actual damages and Defendants' profits attributable to the infringement, or, at Plaintiff's election, statutory damages, as provided in 17 U.S.C. § 504;

d. Plaintiff be awarded his attorneys' fees and costs of suit under the applicable statutes sued upon;

e. Plaintiff be awarded pre- and post-judgment interest; and

f. Plaintiff be awarded such other and further relief as the Court deems just and

JURY DEMAND

Plaintiff Falco Ermert hereby demands a trial by jury of all issues so triable.

DATED: July 12, 2023

Respectfully submitted,

/s/ Jonah A. Grossbardt
JONAH A. GROSSBARDT
MATTHEW L. ROLLIN
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